



Baker & McKenzie LLP

Mark H. Hamer
815 Connecticut Avenue, N.W.
Washington, DC 20006-4078
United States

Tel: +1 202 452 7000
Fax: +1 202 452 7074
www.bakermckenzie.com

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The Honorable Makan Delrahim
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
Main Justice Building
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: *Letter of Request for Business Review of Avanci's Proposed 5G Patent Platform for Connected Transportation Vehicles*

Dear Mr. Delrahim:

We represent Avanci LLC, a cutting-edge patent licensing platform that intends to license patented technology essential for implementation of 5G cellular wireless communications standards for use in transportation vehicles (“Vehicles”)¹ and, in the future, other Internet of Things (“IoT”) devices.

Avanci offers an efficient licensing platform that can bring large numbers of licensors and licensees together at a low transaction cost. Avanci provides licensees critical intellectual property for their products and ensures licensors fair returns on research and development investments to promote innovation. Through these licensing efforts, Avanci's business model actively promotes the development and deployment of cellular wireless connectivity technology in the automotive industry and other industries forming the IoT.

On behalf of Avanci, and pursuant to 28 C.F.R. § 50.6, we submit this request for a business review of Avanci's proposed 5G joint licensing platform (“5G Patent Platform”) by the Department of Justice Antitrust Division (the “Division”). Avanci requests confidential treatment of this letter and its exhibits pursuant to 28 C.F.R. § 50.6(10)(c).

Avanci believes that its proposed 5G Patent Platform is procompetitive and consistent with prior Division guidance. However, Avanci appreciates that the Division's antitrust enforcement conclusions “depend heavily on the particular facts of each pooling proposal or existing pool.”² Therefore, Avanci respectfully requests the Division's review of its proposed 5G Patent Platform prior to implementation.

Wireless connectivity is taking a giant leap forward with the rollout of the new 5G cellular wireless communication standard (“5G”). Enhanced connectivity will allow IoT products, and especially Vehicles

¹ See *infra* Section II.a.

² See *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition*, DEP'T OF JUSTICE & FED. TRADE COMM'N, Ch. 3, § III(D)(1)(b)(i), (April 2017) [hereinafter the “Antitrust-IP Report”], available at <https://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/222655.pdf>.

and their users, to benefit from a wide array of applications that draw on the increased and diverse capabilities of 5G. As explained in more detail below, Avanci’s proposed 5G Patent Platform would focus on the joint licensing of standard-essential patents (“SEPs”) necessary for implementers to deploy advanced communications capabilities for Vehicles.

Avanci’s proposed 5G Patent Platform would promote faster adoption of 5G technology in the automotive sector. Given the complexities surrounding cellular wireless technologies and the number of potential licensors and licensees, the licensing of 5G technology for use in Vehicles and other areas of the IoT presents unique challenges. Avanci’s 5G Patent Platform would address these challenges by reducing licensing costs and by reducing incentives for hold up or hold out.

In this request, Avanci seeks to highlight its approach towards (1) evaluating essentiality, (2) distributing royalties among licensors in a way that will encourage broad platform participation, (3) structuring royalty rates in a way that simplifies licensing and encourages licensees to self-identify, and (4) defining a field of use that minimizes licensing transaction costs and promotes broad platform participation.

I. Background

a. Avanci.

Avanci was founded in Dallas, Texas in 2016 with the same vision it maintains today: to simplify the sharing of technology on a broad scale.³ Avanci creates licensing platforms that operate as a “one-stop” solution for IoT device makers to license essential cellular wireless technologies from multiple patent holders in a single license. In doing so, Avanci aims to make the licensing process more convenient and predictable for licensors and licensees, which in turn would yield substantial benefits to end users of IoT devices.

Avanci has a track record of success with joint licensing. Currently, Avanci offers licensing for 2G (GSM, GPRS, EDGE), 3G (WCDMA, HSPA), and 4G (LTE, LTE-A) cellular SEPs through its existing Licensing Platform for Connected Cars and IoT (“2G/3G/4G Patent Platform”). To date, 36 patent owners, including most of the leading innovators in the development of cellular wireless standards, have joined Avanci’s 2G/3G/4G Patent Platform. Through this successful platform, Avanci has licensed its 2G/3G/4G portfolio to 14 automotive brands as licensees, including several of the largest Vehicle manufacturers. Avanci’s 2G/3G/4G Platform has continually grown since it was launched in 2016, and Avanci expects continued growth in its existing platform in the next few years as the 2G, 3G, and 4G standards continue to be popular for IoT devices.

b. 5G Technology.

Mobile connectivity is poised for a new era with 5G technology, the next stage in the evolution of cellular wireless communications. It will enable substantially enhanced connectivity between different objects and machines throughout the world.

5G improves on and will supplant its 2G, 3G, and 4G (LTE) predecessors. Among other things, 5G technology enables higher data transmission rates, reduced latency, energy savings, cost reduction,

³ See *Vision*, AVANCI, available at <http://avanci.com/vision/>.

and higher connection capacity.⁴ With respect to Vehicles, 5G will also offer “V2X” communication, which permits the direct transmission of information from a Vehicle to any entity (*e.g.*, another Vehicle or a traffic signal) that may affect the Vehicle, and vice versa.⁵

Beyond Vehicles, 5G technology is expected, through its lower-cost options and higher performance, to dramatically increase the number and types of devices that can benefit from wireless access to the internet. In short, 5G technology promises to spawn revolutionary change in IoT capabilities and is expected to bring more connectivity to consumers and industry alike.

Today, companies seeking to license 5G technology face challenges in securing all of the patent licenses necessary to practice the 5G standard because ownership of 5G SEPs is fragmented. A number of companies have large portfolios, including many patent families, while a range of other companies have smaller (but still significant) portfolios.⁶ The number of patents that will be found essential to the 5G standard, as well the number of companies that hold such patents, is expected to grow significantly over the next decade.

II. Structure of Avanci’s Proposed 5G Patent Platform.

Avanci’s proposed 5G Patent Platform would propel innovation forward by reducing licensing complexity and costs while reducing the intellectual property infringement risk associated with launching new products, thereby accelerating the availability and adoption of 5G technology.

Similar to many modern joint patent licensing arrangements, Avanci’s proposed 5G Patent Platform would be governed by an agreement among Avanci and the patent owners, in this case the 5G Master License Management Agreement (“5G MLMA”), which includes a supplemental standard patent license agreement (the “Standard PLA”). The Avanci 5G MLMA (including Appendices) is attached as Exhibit 1.

a. How Avanci’s Proposed 5G Patent Platform Would Work.

Avanci’s proposed 5G Patent Platform would be open to any licensor that owns at least one SEP that has been evaluated by an independent expert.

The proposed 5G Patent Platform would not be the sole option for licensing the relevant cellular SEPs. Specifically, the 5G MLMA would provide that participating licensors may license their SEPs on an individual basis outside of the platform. Avanci, moreover, would play no role in determining what licenses or rates Avanci members offer individually outside of the 5G Patent Platform or in determining at what level in the supply chain Avanci members offer individual licenses. Accordingly, the proposed

⁴ See, *e.g.*, CONGRESSIONAL RESEARCH SERVICE, FIFTH-GENERATION (5G) TELECOMMUNICATIONS TECHNOLOGIES: ISSUES FOR CONGRESS (January 30, 2019) <https://fas.org/sgp/crs/misc/R45485.pdf>.

⁵ Dino Flore, 5GAA Director General, 5G V2X THE AUTOMOTIVE USE-CASE FOR 5G, *available at* https://www.3gpp.org/ftp/information/presentations/Presentations_2017/A4Conf010_Dino%20Flore_5GAA_v1.pdf.

⁶ See, *e.g.*, IPLYTICS, WHO IS LEADING THE 5G PATENT RACE? (July 2019), *available at* https://www.iplytics.com/wp-content/uploads/2019/01/Who-Leads-the-5G-Patent-Race_2019.pdf; CYBER CREATIVE INITIATIVE, INVESTIGATION REPORT ON CANDIDATES FOR 5G STANDARD ESSENTIAL PATENTS (5G-SEP) AND STANDARDIZATION CONTRIBUTIONS (excerpted version) (February 2019), *available at* <https://www.cybersoken.com/file/5G-SEP-ENG.pdf>.

5G Patent Platform would create an alternative to individual licenses that would increase, rather than restrain, licensing opportunities.⁷

Pursuant to the 5G MLMA, participating licensors would appoint Avanci to act as a licensing agent for their SEPs. Avanci would then license—in a single agreement and on behalf of those licensors—a portfolio of 5G SEPs, as well as necessary 2G/3G/4G SEPs,⁸ for use in “Licensed Products.” Under the Standard PLA, which is set out in Appendix A, Document A.1.1, §1.12 defines “Licensed Products” to include “Vehicles that (i) incorporate cellular 5G functionality, (ii) are branded or co-branded with a brand or trademark owned by [licensee] or any of its Affiliates; and (iii) do not have the ability to communicate by means of any Excluded Standard.”⁹

As a licensing agent, Avanci would be authorized to establish and administer a “Licensing Program” for Vehicles incorporating 5G functionality.¹⁰ In the future, Avanci could be authorized to offer additional Licensing Programs for other products that incorporate 5G or other functionality, if there are at least two willing participating licensors.

Avanci would be obligated to use commercially reasonable efforts to identify potential licensees, inform those potential licensees about the availability of a joint license, and negotiate and execute patent licensing agreements (“PLAs”) with licensees. In addition, Avanci would publish standard royalty rates on its website once they are established with the input of licensees and licensors.

⁷ See *Buffalo Broad. Co. v. Am. Soc’y of Composers, Authors & Publishers*, 744 F.2d 917, 925 (2d Cir. 1984) (“[T]he opportunity to acquire a pool of rights does not restrain trade if an alternative opportunity to acquire individual rights is realistically available.”); *Nero AG v. MPEG LA, L.L.C.*, No. 10-cv-3672-MRP, 2010 WL 4878835, at *4 (C.D. Cal. Nov. 24, 2010) (no restraint of trade where patent pool does not restrict individual licensing); *Sumitomo Mitsubishi Silicon Corp. v. MEMC Elec. Materials, Inc.*, No. 05-cv-2133 SBA, 2007 WL 2318903, at *15 (N.D. Cal. Aug. 13, 2007) (“Courts have repeatedly held that if the antitrust plaintiff had the opportunity to license independently from individual owners of . . . patent rights engaged in a pooled activity, then the pool of rights does not restrain trade in violation of the conspiracy provision of the Sherman Act.”); *Matsushita Elec. Indus. Co., Ltd. v. Cinram Int’l, Inc.*, 299 F. Supp. 2d 370, 378-79 (D. Del. 2004) (no restraint of trade when plaintiff “realistically could avail itself of individual licenses to [the essential patents]”); see also *infra* at Section IV.b.

⁸ The current 2G/3G/4G Patent Platform does not license for 5G functionality in Vehicles. With respect to the 5G Patent Platform, in addition to 5G SEPs, it would also be necessary for the joint license to include 2G/3G/4G SEPs because Vehicles designed to incorporate 5G functionality need to be backwards-compatible with older generation cellular wireless technologies.

⁹ Section 1.22 of the Standard PLA defines “Vehicle” to mean “a complete and ready to use transportation vehicle (i) with at least two (2) wheels, (ii) that does not have the capability to operate in on-road traffic without any expectation that a user will respond to a request to intervene, and (iii) that does not operate on rails.” Section 1.4 of the Standard PLA defines “Cellular 5G Functionality” to mean “the ability to perform wireless transmissions in accordance with 5G.” Section 1.20 of the Standard PLA defines “Standards” to mean “2G, 3G, 4G, and 5G.” Section 1.9 of the Standard PLA defines “Excluded Standards” to refer to future cellular standards.

¹⁰ “Licensing Program,” as defined in §1.10 of the 5G MLMA, refers to each specific licensing program described in the applicable addendum.

b. Connected Vehicle Licensing Program PLAs and Royalty Terms for Licensees.

Under §2.1 of the Standard PLA, Avanci would grant, on behalf of those licensors participating in a Licensing Program for Vehicles, a worldwide, nontransferable, nonexclusive, nonsublicensable joint license to make, have made, use, import, sell, and offer to sell Licensed Products.

Royalties for Licensed Products would be based on a flat rate (*i.e.*, a fixed royalty for each Vehicle sold) depending on the type of connectivity involved (*e.g.*, E-Call only,¹¹ Full Connectivity¹²), which would not vary based on the number of additional patents that may be added to the Licensing Program covered under the terms of the PLA.

Specifically, §5.1 of the Standard PLA provides that the licensee agrees to pay (i) a specified release payment and running royalty for Licensed Products that are capable of using the Standards only for E-Call functionality, and (ii) a specified release payment and running royalty for all other Licensed Products that are sold.¹³ In the future, different royalty levels could be set for Licensing Programs involving different products or SEPs.

Section 5.2 of the Standard PLA would also allow a licensee to receive royalty reductions from Avanci (1) for signing a patent licensing agreement prior to its first sale of a Licensed Product, and (2) if the licensee does not assert claims in litigation against Avanci or an Avanci licensor based upon Avanci's licensing efforts.¹⁴

Avanci would not own any SEPs, and would not be authorized to bring or litigate claims for patent infringement on behalf of licensors. In other words, all that Avanci could do is grant licenses on behalf of the participating licensors—it would have no ability to assert in litigation patent rights in any SEPs made available through the 5G Patent Platform.

In addition to royalty reductions available from Avanci, a licensee could also receive a net royalty reduction as a result of entering into individual license agreements with one or more participating licensors. To ensure the efficiencies of the Licensing Programs are not lost as a result of increased transaction costs, and to ensure that Avanci maintains its independence from individual licensing rate negotiations, participating licensees and licensors that wish to negotiate individual bilateral agreements could negotiate credits, offsets, or other consideration, such as cross-license arrangements, directly with one another. In turn, the licensor would have primary responsibility for resolving the effect of any overlapping license with a licensee.

¹¹ Section 1.6 of the Standard PLA defines “E-Call” to mean “the functionality of a Vehicle to either manually or automatically transmit its location, its direction of travel, and the time of an emergency incident to emergency services and/or the functionality of a Vehicle to create and communicate over a voice connection with an emergency operator only and not to communicate over a voice connection for any other purpose.”

¹² The term “Full Connectivity,” as used in this letter, refers to the ability of a Vehicle to communicate via Standards for all purposes (*i.e.*, communications not limited to E-Call).

¹³ Royalties would therefore be determined based on the quantity of Vehicles sold multiplied by the royalty rate, which would depend on whether the Vehicle has E-Call capabilities only or full connectivity functionality.

¹⁴ This royalty reduction would not prevent licensees from asserting claims that challenge the validity, enforceability or essentiality of any Licensor's patent.

c. Allocation of Licensing Fees to Licensors.

Under the procedures set out in Appendix C of the 5G MLMA, the share of Avanci’s “Total Net Collections”¹⁵ that a licensor could receive would be determined based on the cumulative points that the licensor earns through its participation in Avanci’s Licensing Programs.

This appendix details the four categories for which points would be awarded and the points cap associated with each category. These categories include:

- Number of Evaluated Essential Patents.¹⁶ Points would be awarded for each patent family associated with the independently evaluated cellular SEPs owned by the licensor (or its affiliates). Rather than awarding points by counting the number of individual patents, patent families are evaluated to better reflect contributions licensors make to standards and to more accurately represent each licensor’s unique patent holdings. In this way, Avanci’s model can account for collections of patents that cover the same or substantially similar technical content.
- Licensing Revenue. Points would be awarded based on the licensor’s average annual licensing revenue during three consecutive calendar years for its 2G/3G/4G/5G SEPs.
- Standards Contributions. A licensor would be awarded points based on the licensor’s standards contributions made as of May 31, 2019, as calculated by an Avanci-commissioned third party research study of technical contributions to the 3GPP working groups RAN1, RAN2, CT1, CN1, SA2 and SA3.
- Licensing Support. A licensor would be awarded a limited number of points related to the assertion of SEPs against unwilling licensees as a mechanism to recognize the benefit to all licensors for the costs and risks incurred in an assertion that is expected to result in an Avanci platform license.

d. Planned Launch of Avanci’s Proposed 5G Patent Platform.

As of this submission, no licenses have been executed under the 5G Patent Platform. To confirm that no commercial activity takes place before the completion of a business review by the Division, §9.12 of the 5G MLMA includes a business review contingency provision.¹⁷

¹⁵ Section 1.28 of the 5G MLMA defines “Total Net Collections” to mean “the difference between (a) the sum of all License Fees collected from Licensees pursuant to Licensing Program PLAs under such Licensing Program in such calendar quarter less any withholding taxes deducted by the Licensees, and (b) the Commission retainable by [the licensing agent] from such quarterly License Fees pursuant to [§5.2 of the 5G MLMA].” Section 1.12 of the 5G MLMA defines “Licensing Program PLA” to mean “each applicable Patent license agreement for a particular Licensing Program, whether in electronic or paper form, that is executed by LA and a Licensee; all in accordance with the terms of a Licensing Program Addendum.” Section 1.9 of the 5G MLMA defines “License Fees” to mean “the amounts due and payable by a Licensee to LA under a duly executed Licensing Program PLA.” Total Net Calculations would therefore be calculated for each Licensing Program and each calendar quarter.

¹⁶ See *infra* Section IV.a.2.

¹⁷ See Business Review Request Letter from the RFID Consortium LLC, p. 7 (Nov. 26, 2007) (including an attached rider to the Participant Agreement that made Division approval a precondition for any commercial activity).

III. Avanci’s Proposed 5G Patent Platform Would Provide Substantial Procompetitive Benefits.

In the past, the Division has recognized that joint licensing arrangements “may provide procompetitive benefits by integrating complementary technologies, reducing transaction costs, clearing blocking positions, and avoiding costly infringement litigation.”¹⁸ The proposed 5G Patent Platform delivers all of these benefits.

a. Avanci’s Proposed 5G Patent Platform Would Lower Transaction Costs.

The collection of many SEPs to be jointly licensed decreases transaction costs for licensors and licensees (particularly search, litigation, and negotiation costs).¹⁹

Under the 5G MLMA, Avanci would be required to use commercially reasonable efforts to identify potential licensees, inform them of the availability of the joint license, and negotiate a license with those potential licensees. This affirmative obligation of Avanci to seek out potential licensees would decrease the search costs for platform participants. And both licensors and licensees can negotiate a single agreement with Avanci, avoiding the thicket of the many-to-many licensing negotiations that would be required through bilateral licensing.

Moreover, since Avanci bears the burden of distributing the royalties among the participating licensors, licensees are relieved of the burden of evaluating and negotiating the relative individual values of the intellectual property of the participating licensors.

b. Avanci’s Proposed 5G Patent Platform Would Incentivize Participation and Reduce Risk of Hold Up or Hold Out.

The proposed 5G Patent Platform would reduce the risk of hold up and hold out by guaranteeing that any licensor may achieve a fair return on its investment in standardized technology and that any licensee may accept a joint license on transparent, market-tested terms.

Because the joint license would likely cover a substantial majority of SEPs over time, licensees would have an incentive to obtain a license from the platform—particularly as licensor participation levels increase—because the platform offers a less costly and more efficient alternative path for accessing cellular technologies relative to the status quo of individualized licensing transactions.

Further, Avanci would encourage platform participation by both licensors and licensees by (a) making a joint license to a large collection of SEPs available to licensees that make or sell Licensed Products and (b) allowing any licensor with at least one SEP to share in the licensing revenue from every licensee that the licensor has not separately licensed.

¹⁸ Antitrust Guidelines for the Licensing of Intellectual Property, DEP’T OF JUSTICE & FED. TRADE COMM’N, § 5.5 (Jan. 12, 2017) [hereinafter the “Antitrust-IP Guidelines”], *available at* [https://www.justice.gov/atr/IPguidelines/downloadAntitrust-IP Guidelines](https://www.justice.gov/atr/IPguidelines/downloadAntitrust-IP%20Guidelines), jointly published by the Federal Trade Commission and the Division (together, the “Agencies”).

¹⁹ See Business Review Letter Response to the RFID Consortium LLC, p. 7-8 (Oct. 21, 2008) (“RFID Letter”) (noting that “[licensors] would reap the cost savings of centralized licensing and would realize an immediate return on their intellectual property” while “efforts to identify patents essential to the practice of the [] standard and to disseminate this information offers savings in search costs to licensees.”).

Licensing a large number of SEPs at a single price would also decrease the risk of excessive cumulative royalties, which could result when multiple licensors attempt to license their SEPs at prices that do not fully account for the cost licensees must pay for other licenses needed to practice the standard.

c. Avanci’s Proposed 5G Patent Platform Would Reduce Disputes and Litigation.

Joint licensing should increase the number of 5G technology implementers that agree to license SEPs, which should in turn decrease the amount of infringement litigation related to those SEPs that would otherwise be brought by individual patent holders.²⁰ Further, because the 5G MLMA would avoid the need for licensees to determine how to divide royalties among various licensors and would centralize negotiations over licensing terms for SEPs, the proposed 5G Patent Platform would lead to fewer individualized disputes and faster resolution of those that do arise. Over time, this would in turn provide greater certainty regarding how licensing terms are interpreted because there would be fewer parties with potentially divergent interpretations.²¹

d. Avanci’s Proposed 5G Patent Platform Would Accelerate Adoption of 5G Technologies.

By licensing from the proposed 5G Patent Platform, an implementer could quickly gain “peace of mind” that its products will not be subject to numerous costly and distracting infringement challenges from patent holders participating in the platform. As a result, implementers could devote more of their resources to research and development and, as a result, could more confidently harness 5G technology to deliver improved products to consumers.

IV. Avanci’s Proposed 5G Patent Platform Would Contain Many Safeguards to Avoid Anticompetitive Effects.

In addition to delivering these procompetitive effects, Avanci’s proposed 5G Patent Platform would also include safeguards that would avoid anticompetitive effects. Each of these provisions is similar to the types of safeguards adopted by joint licensing arrangements that have received a favorable business review from the Division.

a. Avanci’s Proposed 5G Patent Platform Would Only License Technically Essential Cellular Patents.

The proposed 5G Patent Platform would contain only SEPs, which by definition are complementary and not competitive, decreasing the risk of anticompetitive effects from a joint license.²²

²⁰ See RFID Letter, p. 8 (“[I]f . . . patent licensing increases as a result of the pool license, infringement litigation (and the potential for infringement litigation) will decrease.”).

²¹ *Id.*

²² See, e.g., Antitrust-IP Report, Chapter 3, IV.D.1.b (“the Department’s favorable business reviews of pools have relied heavily on assurances from the parties that the pools contain only complementary patents”).

1. Avanci’s Proposed 5G Patent Platform Would Limit the Scope of its License to Patents That Are “Technically Essential.”

Section 1.11 of the Standard PLA defines “Licensed Patents” to mean “those Essential Patent Claims within a Patent or that issue from a Patent Application that . . . is owned by a Licensor.”²³ If a patent does not fall within this definition, it may not be licensed through the proposed 5G Patent Platform.

Nonetheless, upon request by a licensee, and at no additional cost, Avanci may expand the scope of the license to include: (1) all patent claims included in a patent that includes at least one patent claim that is essential, and (2) all claims in patents that have been declared to a relevant standard-developing body.²⁴ Therefore, consistent with past guidance, licensees would be limited to receiving rights related to those patents that have at least one essential claim.²⁵

To further ensure that the proposed 5G Patent Platform offers only complementary patents in a manner consistent with past guidance, the 5G MLMA defines essentiality based on technical necessity consistent with the ETSI IPR policy.²⁶

2. Avanci’s Proposed 5G Patent Platform Would Limit Participation to Licensors with Essential Patents and Would Use Independent Experts to Review for Essentiality.

Under the 5G MLMA, Avanci would limit participation to licensors that own at least one technically essential patent that has been evaluated by an independent expert.²⁷ Further, Avanci is authorized to terminate for cause any licensor that does not meet this eligibility criterion or otherwise breaches its obligation to warrant its authority to convey essential patent rights.

As outlined in §3.1 of the 5G MLMA, only an entity “that owns (or has the right to license on behalf of its Affiliate) an Evaluated Essential Patent . . . is eligible to become a New Licensor.” In

²³ As set under the Standard PLA, §1.8 of the Standard PLA defines “Essential Patent Claims” to mean “any and all Patent claims as to which it is not possible on technical grounds taking into account normal technical practice and the state of the art generally available at the time of adoption or publication of the relevant Standard, to make, sell, offer for sale, lease, or otherwise dispose of and import, repair, use or operate products, equipment, or methods that comply with the relevant Standard without infringing such Patent claims.” As outlined in §1.5 of the 5G MLMA, an “Essential Patent” is defined as “a Patent that includes at least one claim as to which it is not possible on technical grounds . . . to make, sell, offer for sale, lease, or otherwise dispose of . . . any 2G mobile station, or any 3G or 4G or 5G user equipment, or . . . methods which comply with the relevant Standards and are used by such 2G mobile station or 3G or 4G or 5G user equipment.”

²⁴ See Pre-Approved Modifications, Appendix A, Document A.1.2, §§ 1.8, 1.11.

²⁵ See also, e.g., RFID Letter, p. 9 n. 40 (“To determine whether a patent is essential to a standard, the examiner reviews the patent’s independent claims. Once one claim is deemed essential (*i.e.*, complementary), the entire patent enters the pool and is available for licensing.”); Business Review Letter Response to the 3G Patent Platform Partnership, p. 3 (Nov. 12, 2002) (“3G Letter”) (“For a patent to be deemed essential to a particular 3G standard, at least one claim under the patent must be found to be essential.”).

²⁶ See Business Review Letter Response to MPEG LA, L.L.C., et al., p. 10 (June 26, 1997) (“MPEG Letter”) (“[t]he limitation of the Portfolio to technically essential patents, as opposed to merely advantageous ones, helps ensure that the Portfolio patents are not competitive with each other and that the Portfolio license does not, by bundling in non-essential patents, foreclose the competitive implementation options that the MPEG-2 standard has expressly left open.”).

²⁷ See MPEG Letter, p. 10 (“[t]he continuing role of an independent expert to assess essentiality is an especially effective guarantor that the Portfolio patents are complements, not substitutes.”).

accordance with §1.6 of the 5G MLMA, “Evaluated Essential Patents” are those patents that have been evaluated by an independent patent evaluator (“Patent Expert”), who makes essentiality determinations based on objective criteria, in accordance with the procedures set out in Appendix B.

The process for evaluating patents used for purposes of awarding royalty distribution points creates appropriate financial incentives for licensors to submit only the patents that they believe have essential patent claims for evaluation, and if they nevertheless submit a patent with no essential claims for evaluation, the independent Patent Expert would reject that patent.

To preserve the Patent Expert’s independence, the Patent Expert would be appointed by Avanci and screened for conflicts of interest (meaning it cannot be affiliated with or otherwise have represented in patent matters the entity whose patents are being evaluated). To further prevent conflicts of interest, Avanci would be required to (i) maintain access to a plurality of Patent Experts, (ii) identify Patent Experts that are “conflict-free to evaluate the claim chart,” and (iii) prevent the identity of a given Patent Expert from being disclosed to the licensor. Patent Experts would be independent contractors and not employees of Avanci. Patent Experts would be paid fixed fees for each patent evaluation they perform, independent of evaluation outcomes.

b. Avanci’s Proposed 5G Patent Platform Would Preserve the Ability of Licensors and Licensees to License Independently Outside of the Platform.

Consistent with past guidance,²⁸ the proposed 5G Patent Platform expressly preserves the ability of licensors to license their patents outside of the platform.²⁹ Section 4.3 of the 5G MLMA would guarantee that “each Licensor retains the right to independently enter into licenses for its Essential Patents or any other Patents with prospective licensees for any products.” Licensees would similarly be “free to conduct separate negotiations . . . simultaneously with any or all of the Licensors independently, individually, and directly.”³⁰ As set forth above, courts have repeatedly held that the pooling of patent rights presents less antitrust concern where, as here, licensees retain the opportunity to license independently from the individual owners of the pooled patents.³¹

²⁸ See Antitrust-IP Guidelines, § 4.1.2 (“A non-exclusive license of intellectual property that does not contain any restraints on the competitive conduct of the licensor or the licensee generally does not present antitrust concerns. That principle holds true even if the parties to the license are in a horizontal relationship, because the non-exclusive license normally does not diminish competition that would occur in its absence.”); see also, e.g., RFID Letter, p. 4; Antitrust-IP Report, Chapter 3, III.D.2 (“In the pooling proposals reviewed by the Department, each licensor proposed granting a nonexclusive license to the pool and retaining the right to license its patent outside the pool.”)

²⁹ Licensors may not participate in other joint licensing programs that license cellular wireless essential patents for products that are subject to a Licensing Program. The agreement would not otherwise restrict licensors’ ability to license their patents through joint licensing programs.

³⁰ See Standard PLA, §9.2.

³¹ See *Sumitomo Mitsubishi Silicon Corp. v. MEMC Elec. Materials, Inc.*, No. 05-cv-2133 SBA, 2007 WL 2318903, at *15 (N.D. Cal. Aug. 13, 2007); *supra* n.7.

c. The Duration of the Joint Licenses Granted by Avanci Would be Reasonable.

Joint licenses granted by the proposed 5G Patent Platform would have a term of 5 to 10 years, as agreed upon by Avanci and the licensee. This is consistent with the duration of most bilateral licenses for cellular SEPs, is consistent with past guidance,³² and further helps reduce transaction costs by avoiding frequent renegotiations and renewals.

d. Avanci's Proposed 5G Patent Platform Would Include Open Participation and Ensure Non-Discriminatory Licensing.

The proposed 5G Patent Platform would include multiple safeguards that protect against upstream and downstream foreclosure concerns.³³

First, and most directly, nothing in the 5G MLMA would restrict the ability of any owner of a cellular SEP from participating in the proposed 5G Patent Platform.

Second, licenses would be made available on non-discriminatory terms through Avanci, as an independent licensing agent. Accordingly, there would be no restriction on who can receive a license within the Licensing Program's field of use, and licenses would be offered on transparent terms. For example, for licensees participating in the Licensing Program for Vehicles, Avanci would offer to any licensee a license for cellular SEPs to make, use and sell products within the field of use (*i.e.*, Vehicles that have 5G functionality) by charging a flat per-Vehicle royalty rate.

e. Avanci Would Prohibit Patent Owners from Sharing Competitively Sensitive Information Through the Proposed 5G Patent Platform.

The proposed 5G Patent Platform would include provisions to protect the confidentiality of the competitively sensitive information of Avanci's patent owners.³⁴

³² See First DVD Letter, p. 14-15 (“In the current circumstances, the proposed ten-year term of the license does not pose significant concerns. The Portfolio Licenses authorize only a limited field of use for the licensed technology – the manufacture and sale of products that comply with the Standard Specifications; they do not limit licensees’ other options. Licensees may seek presently unknown methods of complying with these standards, or they may support altogether different product standards . . . The uncertainty of market conditions at that time makes it impossible to speculate on the degree of power, if any, the Licensors will hold over any future technology licensing market.”); MPEG Letter, p. 12 (“The license’s initial duration . . . does not present any competitive concern. While the open-ended renewal term of “no less than five years” holds open the possibility of a perpetual license, its competitive impact will depend substantially on whether any of the ‘reasonable amendments’ made at that time increase the license’s exclusionary impact.”).

³³ See, e.g., Business Review Letter Response to Hitachi, Ltd., Matsushita Electric Industrial Co., Ltd., et al., p. 14 (June 10, 1999) (discussing foreclosure of competition in related markets); RFID Letter, p. 10 (discussing harm to rivals in downstream markets); cf. Antitrust-IP Guidelines, § 5.5 (“[p]ooling arrangements generally need not be open to all who would like to join . . . exclusion from a pooling or cross-licensing arrangement among competing technologies is unlikely to have anticompetitive effects unless (1) excluded firms cannot effectively compete in the relevant market for the good incorporating the licensed technologies and (2) the pool participants collectively possess market power in the relevant market.”).

³⁴ See Antitrust-IP Report, Chapter 3, § III.D.4.b (“[p]ooling agreements that limit licensors’ access to each other’s competitively sensitive proprietary information, such as cost data, output levels, and prices of final products, lowers the risk that licensors will be able to coordinate their activities in final product markets.”).

First, Avanci is an independent licensing agent. Beyond its licensing activities, Avanci does not participate in the automotive industry such that it could competitively make use of the information it obtains from participants.

Second, as explained in more detail above and outlined in §6.1 of 5G MLMA, no Confidential Information provided by a licensor to Avanci (as the licensing agent) can be disclosed to unaffiliated third parties such as other licensors.³⁵ Moreover, access to such information would be limited to employees who have executed a non-disclosure agreement and operate on a need-to-know basis.

f. Avanci’s Proposed 5G Patent Platform Would Prevent Royalty “Double Dipping.”

Mechanisms designed to prevent “double dipping” (the earning of double royalties from joint licensing and direct licensing) are common in joint licensing arrangements, are procompetitive, and benefit licensees.³⁶ Avanci’s proposed 5G Patent Platform would have such protections.

Participating licensors would be required to identify overlapping licenses and would be prohibited from collecting more than one royalty for the same patents with respect to the same products, including royalties earned on the product’s components. This approach ensures that licensors either provide an individually negotiated offsetting payment, credit or other consideration directly to a licensee as a result of an individual direct license, or otherwise notify Avanci to issue a deduction or credit to a licensee commensurate with the individual licensor’s waiver of their right to claim a share (or portion) of Total Net Collections³⁷ from a particular licensee who has an overlapping license.

The reason for placing primary responsibility on the licensor (as opposed to Avanci) is that patent owners generally have more information about their own individual licensing practices and are generally better positioned to work with the licensee to resolve the issue. Because the platform is designed to reduce the need for bilateral licenses and hence the frequency of overlapping licenses, the proposed 5G Patent Platform is aimed at minimizing conflicting obligations.

³⁵ Section 6.1 of the 5G MLMA defines “Confidential Information” to mean “all technical and commercial information (including royalty reports, distribution statement, tax information, other information provided pursuant to the terms herein, marketing and sales plans, and Licensee information) that is either (i) disclosed in writing by the Disclosing Party to the Receiving Party and is labeled “Confidential” or by the nature of the information or by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential, or (ii) disclosed orally or in any other intangible form and designated as proprietary or confidential at the time of disclosure.” This term does not include “any information: (a) that becomes generally available to the public other than as a result of unauthorized disclosure by the Receiving Party; (b) that was available to the Receiving Party on a non-confidential basis prior to receipt from the Disclosing Party or is received thereafter from a third party without restriction and without breach of any duty of confidentiality; or (c) that is independently developed by the Receiving Party without the use of or reference to any Confidential Information from the Disclosing Party, as clearly demonstrated by the Receiving Party.”

³⁶ See, e.g., Japan Patent Office, *Guide to Licensing Negotiations Involving Standard Essential Patents*, p. 33 (June 5, 2018) (“Some point out that patent pools do not necessarily improve efficiency if rights holders who grant licenses individually participate in the patent pool, as this may cause double royalty earnings on the part of such rights holders. Because of this, some patent pools establish mechanisms to prevent double royalty earnings.”).

³⁷ See *supra*, Section II.c.

g. Avanci's Proposed 5G Patent Platform Would Not Include Grantback Provisions.

The 5G MLMA does not contain grantback provisions. In other words, potential licensees would not be required to license their own patents as a condition of licensing the SEPs available through the proposed 5G Patent Platform.

V. Additional Antitrust Considerations

Avanci seeks to highlight four procompetitive features of its 5G Patent Platform: (1) its approach for evaluating essentiality, (2) its proposed royalty distribution methodology to promote broad licensor participation, (3) its end-use pricing approach, and (4) its field-of-use licensing provisions. It is Avanci's view that these practices are consistent with the Division's prior guidance, are procompetitive, and are necessary to ensure the successful operation of the proposed 5G Patent Platform.

a. Avanci's Approach to Analyzing Essentiality Is Procompetitive.

Avanci's approach to patent evaluations aims to achieve two key objectives given the large universe of total cellular wireless patents (potentially many thousands) and the diverse range of licensors (potentially 36 or more with patent portfolios of varying sizes). First, patent evaluations serve an important gatekeeping function because licensors are eligible to join the platform only if they have at least one Evaluated Essential Patent.³⁸ Second, Avanci's approach is aimed at evaluating as many distinct patent families as commercially practical while also maximizing the number of patent owners that join the proposed 5G Patent Platform.

As noted above, the number of patent evaluations a licensor requests affects a licensor's point total for royalty distributions. Licensors are thereby incentivized to have as many of their patent families evaluated as possible up to the allowable points cap to maximize their royalty distributions. At the same time, Avanci recognizes that certain licensors may not have all of their patent families evaluated because the size of a given licensor's patent portfolio may exceed the allowable points cap. The points cap is nonetheless critical to broad participation in the platform. In the absence of a points cap, patent owners with smaller portfolios may be discouraged from joining the platform due to concerns that they would not be compensated adequately. The combination of the evaluation-based royalty distribution method and the points cap strikes the right balance between encouraging essentiality evaluations and encouraging participation by licensors with smaller portfolios.

Moreover, given the size of certain licensors' patent portfolios and the large number of potential licensors, it would be cost prohibitive to evaluate patents from every patent family across all prospective licensors' portfolios. Given the number of 5G patents (as well as 4G, 3G, and 2G patents, which would also be made available through the platform), it would be commercially impractical for Avanci to evaluate patents registered in multiple countries across the globe from thousands of families of patents given the time, resources, and financial costs associated with such an undertaking. Avanci's approach is therefore aimed at encouraging licensors to have patent families in their portfolios independently evaluated, while at the same time ensuring evaluations are done in a way that is commercially feasible and does not dissuade patent owners from joining the platform.

³⁸ See *supra* Section IV.a.2.

Significantly, patent evaluations do not affect the scope of the license, which is by definition limited to technically essential patents of the participating licensors. Nor do patent evaluations affect Avanci's royalty rates, which remain constant even as additional licensors join the platform and as additional SEPs are licensed through the platform. Together, these safeguards ensure that only complementary SEPs would be made available to licensees.

b. Avanci's Royalty Distribution Methodology Promotes Broad Licensor Participation.

Avanci's royalty distribution methodology encourages licensors to join the platform and ensures they are fairly compensated for their contributions. Unlike certain joint licensing arrangements reviewed by the Division in the past,³⁹ Avanci's royalty distribution methodology does not rely only on the number of patents as the sole determinant of royalty share. Avanci instead uses a combination of quantity and quality factors—both objectively measurable—that account for the value of patent holders' contributions to the platform.

Given the diverse range and number of patent holders with 5G SEPs, the distribution methodology must be designed to encourage both large and small licensors to join. A methodology based solely on the number of SEPs contributed would tend to discourage patent holders with smaller portfolios, or those with particularly high-value SEPs, from joining the platform. It could also result in certain patent holders trying to “game the system” by increasing the number of individual patents in their portfolio through divisionals, continuations, and counterparts. At the same time, Avanci understands the need to maintain measures that properly account for the number of patent families that are contributed to the platform and the value of active contributions that have been made to standards.

Avanci's model is constructed to account for these concerns and to encourage the broadest possible participation in the platform. For example, licensing revenues provide a proxy for how the patents of some licensors have been valued through bilateral negotiations in the marketplace. Standards contributions account for the number of actual contributions licensors make to the standards based on a study conducted by an independent third-party expert.

Finally, licensing support compensates licensors for their efforts to address infringement, which ensures wider participation from licensees in the platform. Licensing support provides assurances to licensees that they will not be placed at a competitive disadvantage relative to those manufacturers that implement without obtaining licenses for patented technologies. This methodology factor is also particularly beneficial to licensors with smaller patent portfolios, and attracting such licensors makes more SEPs available for licensees through the platform without increasing royalty rates.

c. Avanci's Pricing Approach for Vehicles is Procompetitive.

Avanci uses a flat rate royalty model in which a licensee pays a fixed amount for each Licensed Product it sells. Royalty rates are then differentiated based on the specific application.

Avanci's pricing approach is designed to simplify the licensing of SEPs and ensure necessary patent rights are made available to product developers while also providing licensors a fair return on their investments. By offering a flat rate royalty that varies based on the type of cellular wireless connectivity

³⁹ In several past business reviews, royalties were allocated primarily based on each Licensor's proportionate share of the total number of Portfolio patents in the countries in which a particular royalty-bearing product was made and sold. *See* MPEG Letter, p. 3; RFID Letter, p. 4, 10.

that is provided in connection with a Licensed Product, Avanci's approach offers greater predictability and lowers transaction costs for both licensors and licensees.

Additionally, Avanci's introduction of royalty rate reductions for willing licensees that self-identify and choose to license through the proposed 5G Patent Platform is designed to bolster licensee participation.

1. Charging a Fixed Amount Per Vehicle Simplifies Licensing and Ensures Cost Predictability.

Avanci's pricing approach streamlines royalty determinations. Alternative approaches, such as requiring a lump-sum payment based on a licensee's future sales estimates or calculating royalties as a percentage of the sales price of a unit sold by a licensee, can be complex to calculate and entail more extensive reporting by licensees. In the case of Vehicles, it is infeasible to measure the value of licensed technologies using a percentage of sales price approach, since Vehicles may have uses unrelated to cellular wireless connectivity. By contrast, a flat per-unit royalty rate helps to lower transaction costs by simplifying reporting requirements. A flat per-unit rate also ensures that royalties vary directly in relation to the actual number of units sold (rather than being tied to metrics like projected revenues that could easily turn out to be inaccurate).

Use of a fixed per-unit royalty rate also ensures that the joint license will become more valuable over time. As new licensors join the platform and existing licensors obtain additional patents, their patents are automatically included in the joint license with no increase in the royalty rate. A fixed per-unit royalty rate therefore offers greater cost predictability to the licensee for the duration of the term of the joint license. At the same time, patents owners are guaranteed that their essential patents will be included in the license while also ensuring that they are compensated over time for the value of their intellectual property across multiple licensees.

2. Differentiation of Royalty Rates for Different End-Use Applications Ensures the Joint License Fairly Accounts for the Value of Licensed Technologies.

Because cellular wireless communications standards (like 5G) are primarily aimed at ensuring connectivity among many different types of end products (*e.g.*, Vehicles), the value of licensed technology should be determined with reference to the value that the licensed technology provides to a particular product. Therefore, the value of connectivity may vary significantly depending on the end product in question (*e.g.*, a smart utility meter versus a Vehicle).

Accordingly, it is economically rational and procompetitive to price cellular wireless communication SEPs in the automotive field based on how the cellular wireless communications standards are implemented in the end product (the Vehicle). For example, Avanci intends to charge a lower royalty rate if the Vehicle is equipped to use the cellular wireless communication technologies only for emergency call functionality and a higher rate if the Vehicle is equipped with Full Connectivity for (among other things) internet access, voice calls, and data transmissions.⁴⁰ By adjusting royalty rates in relation to the

⁴⁰ E-Call connectivity is infrequently used, as its use is limited to emergency situations in accordance with government regulations. By contrast, full connectivity enables regular communication across all applications for which cellular wireless connectivity can be established.

specific end-user application at issue, Avanci’s pricing approach ensures that the joint license captures differences in the value connectivity offers from one Vehicle to the next.

3. Royalty Reductions for Licensees that Self-Identify and Avoid Litigation Increase the Incentives for Licensees to Participate in the Platform and Lower Transaction Costs.

Avanci’s proposed royalty reductions for licensees are designed to encourage licensee participation and lower transaction costs in two primary ways.

First, by offering royalty reductions to licensees that enter into a licensing agreement with Avanci prior to selling Licensed Products, Avanci offers financial incentives to sign up early and enable patent owners to receive compensation sooner.

Second, offering a royalty reduction for licensees that do not pursue litigation based upon Avanci’s efforts to offer or negotiate licenses (or their patent licensing agreement with Avanci) would help to further lower transaction and dispute costs.

In both cases, the reduced transaction costs and delays can be converted into more favorable licensing terms for the licensee. This outcome would also drive more licensing to take place on the platform, and, in turn, reduce the need for bilateral negotiations and the frequency of disputes that occur when bilateral negotiations fail.

d. Avanci’s Field-of-Use Provisions are Procompetitive.

Avanci’s licensing authority would initially be limited to a specific field of use: Vehicles that incorporate 5G functionality. Field-of-use restrictions are commonplace in licensing agreements—particularly with respect to cellular wireless communications standards that promote connectivity between specific end-use devices. Avanci’s field-of-use restriction does not present any competitive concerns.

1. Field-of-Use Restrictions Are Necessary to Define Avanci’s Scope.

Joint licenses generally provide access to a broad portfolio of technologies related to a particular field of use.⁴¹ As explained in the Antitrust-IP Guidelines, field-of-use provisions “may serve procompetitive ends by allowing the licensor to exploit its property as efficiently and effectively as possible.”⁴² In particular, these types of provisions “can be used to give a licensee an incentive to invest in the commercialization and distribution of products embodying the licensed intellectual property and to develop additional applications for the licensed property.”⁴³ This incentive, in turn, promotes innovation and interbrand competition among creators of essential technology.

With respect to cellular SEPs, use of these technologies may vary across different industries and applications depending on the product (*e.g.*, smart meters and Vehicles). Given these different use cases and the different value associated with connectivity for different products, it is commonplace for licensors

⁴¹ Antitrust-IP Report, Chapter 3, § II.

⁴² Antitrust-IP Guidelines, § 2.3.

⁴³ *Id.*

to confine the use of wireless technologies to specific use cases when negotiating the royalty rate, scope, and other terms of the license.

From Avanci's perspective as a platform intermediary between licensors and licensees, a primary determinant in defining a Licensing Program's field of use is the level at which licensing for a given product is most efficient. For a licensing agent, clear field-of-use restrictions are necessary to define the scope of the license, determine fair and simple pricing, simplify and clarify the scope of licensing authority, and ensure the efficient and even-handed operation of the platform.

2. Licensing Vehicles Is an Efficient Approach for the Automotive Industry.

For many reasons, from Avanci's perspective as a licensing intermediary, the most efficient level at which Avanci can license cellular technologies in the automotive supply chain is the Vehicle. As noted above, however, participating licensors would not be restricted from entering into individual licenses with component suppliers.

First, from Avanci's perspective as the licensing agent, the Vehicle manufacturer base is more visible, smaller in number, and more consistent over time, relative to the base of component suppliers. The automotive supply chain is composed of multiple tiers of suppliers, many of which are not publicly ascertainable by licensors (for example, due to confidentiality agreements suppliers have with manufacturers). In addition, the identities of suppliers can vary significantly based on various factors, including a Vehicle's model, year, make, and the geography in which it is sold. It is not a simple matter to identify the suppliers, as such information is often kept confidential. Simply put, Avanci can more readily achieve the procompetitive efficiencies of the 5G Patent Platform if it knows with whom to negotiate and if it has fewer licenses to negotiate.

In contrast to the automotive supply chain, brand-related automotive sales are generally publicly observable and verifiable. As a result, licensing the Vehicle, rather than individual components, makes it easier to identify potential licensees and ensures that a consistent (and ascertainable) baseline of products is used in analyzing the value of the joint license.

Second, because of differences in how Vehicles are manufactured and Vehicles' technical requirements, it is often unclear from a licensing agent's perspective whether (and to what extent) a given component (*e.g.*, TCU, module, or baseband processor) will be incorporated into a given Vehicle. For example, a Vehicle could incorporate a higher-order "component" such as a telematics unit multiple times and each telematics unit could incorporate different kinds and quantities of lower-order "components" such as multi-chip modules. Determining which and how many components of different types are actually incorporated into a given Vehicle would be an extreme burden on all involved (*i.e.*, the component suppliers, the Vehicle manufacturers, and Avanci) and might prove commercially infeasible. And if mistakes were made in licensing components, the likely result would be the payment of multiple royalties for one Vehicle and no royalties for another Vehicle.

Third, since the Vehicle manufacturer's selection of components for a Vehicle would not affect the amount of the royalty that the licensee pays (*i.e.*, a flat per Vehicle rate that varies depending on whether the license is for E-Call Only or Full Connectivity), licensing at the Vehicle level enables Vehicle manufacturers to make their design and supply choices without regard to patent licensing costs.

In contrast, since different Vehicle manufacturers use different supply chain arrangements, there will not necessarily be a common type of component in the supply chain where uniform licensing can occur. For example, one manufacturer may obtain connectivity for its Vehicle by purchasing a third-party telematics unit, another may design its own telematics unit using a third-party module, and yet another may purchase a third-party head unit. The complexity of licensing components increases with every possible permutation, increasing transaction costs and uncertainty for all involved.

Finally, Avanci's prior experience in the automotive industry with its existing 2G/3G/4G vehicle licensing program supports its proposed arrangement for the 5G Patent Platform. It would be an effective approach to keep transaction costs low and secure broad licensor and licensee platform participation.

3. Licensing Vehicles is Consistent with Prior Guidance.

In addition to the procompetitive reasons discussed above, Avanci believes that licensing Vehicles is consistent with prior Division and Agency guidance for two main reasons.

First, the Division has issued favorable business reviews where the licensing agent committed to license essential patents to "any interested parties," but only for specific products and uses. For example, in the joint licensing addressed in the RFID Letter, participants were granted essential UHF RFID patents specifically related to the manufacture, sale, or use of certain licensed products like labels, readers, and mobile consumer communication devices, with different royalty rates set for the different licensed products.⁴⁴

Second, the Antitrust-IP Report recognizes that "a refusal to license less than all of a pool's intellectual property will not raise competitive concerns, provided that the licensors retain the ability to license their patents individually and the pool's design is otherwise procompetitive"⁴⁵ and that "requiring such partial licenses would tend to undermine the chief efficiency benefit of pooling arrangements, namely, the ability to offer as close to 'one-stop shopping' as possible for a given technology."⁴⁶ This concern about piecemeal licensing applies equally to a requirement to license SEPs for all use cases. For example, a component may implement only certain functions or portions of the relevant cellular wireless standards and hence require a license for only a particular set of SEPs. If a platform were required to offer a customized package of SEPs for all differently-situated manufacturers throughout a given supply chain, or to adjust or customize the package price for an unqualified number of use cases, the transaction efficiencies sought to be achieved by the platform would be severely undermined.

VI. Conclusion

Avanci has structured its proposed 5G Patent Platform to adhere closely to past Division guidance. In addition, Avanci has tailored its licensing approach for the complex multi-party world of 5G technology development in a way that would enhance procompetitive efficiencies and minimize any anticompetitive effect.

Avanci's approach to essentiality evaluations, its innovative royalty distribution methodology, its end-use royalty rate approach, and its licensing model would streamline 5G technology licensing in the

⁴⁴ RFID Letter, p. 5.

⁴⁵ Antitrust-IP Report, Chapter 3, § III.D.6.b.

⁴⁶ *Id.*

automotive industry. Avanci's platform would encourage early technology adoption and will lower transaction and litigation costs for all platform participants. In short, Avanci's platform would enhance interbrand competition among both licensors and licensees, and would help propel 5G innovation and implementation forward.

Avanci appreciates the Division's consideration of this business review request, and is available to answer any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Hamer". The signature is fluid and cursive, written over a light gray rectangular background.

Mark H. Hamer
Daniel S. Graulich
Counsel for Avanci LLC

Enclosures